IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1605 OF 1992

Shikshak Pratishtaan & Ors. ...Petitioners
vs.
State of Maharashtra & ors. ...Respondents

WITH
WRIT PETITION NO.1847 OF 1992

Prof.Vithal Dhondu Wani & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.3557 OF 1993
(APPELLATE SIDE)

Shikshak Pratishtaan & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr. Mihir Desai for the petitioners
Ms M.M.Jadhav, A.G.P. for State
Mr. K.A.Rodrigues for respondent No.2

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE OF HEARING OF LAST ARGUMENTS: DECEMBER 5,2005
DATE OF PRONOUNCEMENT OF JUDGMENT: 13th JANUARY 2006

JUDGMENT: (PER A.S.OKA,J.)

1. Considering the controversy involved in these three Petitions, the same can be disposed of by a common Judgment.

2. For the sake of convenience we are firstly dealing with the facts of the case in Writ Petition No.1605 of 1992. The Petitioners No.2 to 6 are lecturers in various colleges affiliated to the University of Mumbai. The Petitioners were appointed between 1978 to 1985 and have secured more than 55%

marks at the post graduate level and are having good academic record. The State of Maharashtra issued a Government Resolution (hereinafter referred to as 'G.R.') dated 31st January 1983. By the said G.R., the State Government directed that the revised qualifications prescribed by the University Grant Commission and accepted by the Government of India as shown in appendix 'A' of the Government of India Resolution dated 15th December 1989 shall be made applicable as a condition precedent to the teachers becoming eligible for revised pay scale. The qualifications incorporated in the said G.R. for college lecturers are as under :

a) Good academic record with at least second class (C in the seven points scale) Master's degree in relevant subject from an Indian University; and

b) An M.Phil degree or a recognised degree beyond the Master's level or published work indicating capacity of a candidate for independent research work

. provided that if a candidate possessing the qualifications as at (b) above is not available or not considered suitable, the college on the recommendation of the Selection Committee may appoint a person possessing a consistently good academic record on the condition that he will have

to obtain an M. Phil. Degree or a recognised degree beyond the master's level within eight years of his appointment failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard.

3. The State Government issued G.R. dated 27th February 1989. Paragraph No.8 of the said G.R. reads thus :

"8. The minimum qualifications required for appointment to the post of Lecturers, Readers and Professors, Librarians and Physical Education Staff in the existing pay scale of Rs.700-1600 will be those prescribed by the University Grants Commission from time to time. Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs.2,200-4000 shall be Master's degree in the relevant subject with at least 55 per cent marks or its equivalent grade and good academic record."

Paragraph No.10 reads thus :

"10. In order to encourage research, in continuation of

Post-graduate studies, candidates, who, at the time of their recruitment as Lecturers/Librarian/Physical Education Staff possess Ph.D. or M.Phil degree, will be sanctioned three and one advance increments respectively in the scale of Rs.2200-4000, along with the benefit of corresponding years of service for the purpose of promotion. The existing incumbents without research degree and those similarly situate, recruited in future will be eligible for a similar benefit in service for the purpose of promotion as and when they acquire research degrees, but will not be eligible for advance increments. Existing incumbents with research degrees will also be eligible for a similar benefit.

4. Clause No.8 of the G.R. indicates that requirement of obtaining M. Phil. Degree has been dispensed with and the qualification prescribed for the post of lecturer in the pay scale of Rs.2200-4000 is master’s degree in relevant subject with at least 55% marks or equivalent grade and good academic record. By letter dated 13th December 1989, Education and Employment Department of Government of Maharashtra issued a clarification to the Registrar of University of Mumbai to the effect that the teachers who were appointed on the basis of old qualifications and whose appointment has been approved by

the University, even though they have not acquired M.Phil Degree, are eligible for senior scale on the basis of number of years of service. By a further G.R. dated 15th December 1989 it was provided as under :

"(1) Although, generally the minimum qualifications for appointment to the post of Lecturer shall be Master's Degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record, where the Universities have, after ensuring the availability of clear vacancies, workload and strict fulfilment of recruitment rules, which were actually in force and adopted during the period from 1.1.86 to 27.2.1989, approved appointments, they will be continued in the manner indicated below :-

(i) Teachers appointed between 1.1.86 and 27.2.86 having more than 55% marks in the relevant subject at post-graduation level, but without M. Phil, would be continued in those appointments without insisting on acquiring M. Phil, as that condition has now been waived.

(ii) Teachers appointed between 1.1.86 and 27.2.89 with IInd Class with less than 55% marks in the relevant

subject at post-graduation level but without M. Phil. degree, with the stipulation of acquiring the degree within a period of 8 years, would have to acquire the said qualification within the said period, failing which their increments in those appointments will be withheld, with permanent effect, and the next increment will be released only after the fulfilment of the said requirement; and

(iii) Teachers appointed between 1.1.86 and 27.2.89 with less than 55% marks in the relevant subject at post-graduation level, with M. Phil Degree, may be continued in those appointments."

5. The prayer in this Petition is for declaration that the G.R. dated 27th February 1989 does not distinguish between teachers appointed prior to 1986 and teachers appointed after 1986 and that the said G.R. gives exemption to all teachers from acquiring the M.Phil Degree as a minimum qualification, irrespective of their date of appointment. In the alternative, the prayer is for declaration that G.R. dated 15th December 1989 is liable to be struck down to the extent that it does not give exemption from acquiring M.Phil Degree as a minimum qualification for teachers appointed prior to 1-1-1986 with more than 55% marks at the master’s level. The challenge in the petition is to the notices issued on 8th

April 1992 to some of the Petitioners by which they were informed that as they were not having qualification of M.Phil degree, they were not entitled to obtain any increments. There is a consequential prayer incorporated in this Petition regarding direction to the Respondents to grant increments to the Petitioners.

6. The learned Counsel appearing for the Petitioners submitted that when G.R. dated 27th February 1989 makes no distinction between the teachers appointed prior to the year 1986 and after the year 1986, the classification of the teachers made by G.R. dated 15th December 1989 with retrospective effect from 1st January 1986 into pre 1986 and post 1986 appointed teachers is arbitrary and discriminatory. He placed reliance on the decisions of this Court delivered in Writ Petition No.942 of 1992 dated 28th January 2005 (Prof. Malini Johri Vs. State of Maharashtra & Others) and in Writ Petition No.2013 of 1993 (Shikshak Pratishatan and others Vs. State of Maharashtra & Others). He submitted that the case of the Petitioners is squarely covered by the said decisions. He submitted that in any event prayer (b) deserves to be granted along with the prayers (c) and (d).

7. Shri Rodrigues learned Counsel appearing for the Respondent No.3 did not dispute that the orders passed by this Court in Writ Petition No.942 of 1992 and Writ Petition

No.2013 of 1993 have attained finality. He, however, submitted that prayer (a) in this Petition is very wide and if the said prayer is granted, the requirement of acquiring M.Phil Degree will stand dispensed with in case of all the teachers. He fairly stated that appropriate order may be passed in the light of the two decisions of this Court. The learned A.G.P. appearing for Respondent Nos.1 and 2 submitted that Government Resolution dated 15th December 1989 is neither arbitrary nor discriminatory and therefore no interference is called for.

8. We have considered the rival submissions. On 14th August 1992, interim order was passed by this Court in Writ Petition No.1605 of 1992 while issuing rule. The said order reads thus:

. "Rule.

. Interim relief against the operation and implementation of any order or direction providing that the Lecturers appointed prior to 1.1.1986 should acquire M. Phil or Ph.D. Degree in order to become entitled to further increments in the revised pay-scales, subject to the condition that each of them will furnish an undertaking that in case the Writ Petition fails they will refund the amount or

allow the recovery to be made from their future salary or, as the case may be, from their pensionary benefits. The said undertaking to be executed in favour of the State of Maharashtra. Increments due pursuant to this order shall be released within a period of four weeks from the date of filing of the undertaking by each of the concerned Lecturers with the respective College Managements."

Similar interim orders have been passed in other two Petitions.

9. It will be necessary to refer to the decision of a Division Bench of this Court in Writ Petition No.2013 of 1993. The relevant part of the said decision reads thus :

. "The Director of Higher Education, by his letter dated 20-2-1992 addressed to the Registrar, North Maharashtra University has set out the clarification issued by the Government to the effect that teachers appointed prior to 1-1-1986 and whose increments have been withheld for not requiring the degree of M.Phil/Ph.D within the stipulated period are eligible for drawing annual increment as also for placement in the revised scales on the basis of their pay on 31st December 1985. There is also an

earlier clarification dated 13th December 1989 issued by Education & Employment Department to the Registrar, University of Bombay, clarifying that the teachers who were appointed on the basis of old qualifications and whose appointments have been approved by the University, even though they have not acquired the M.Phil degree within a period of 8 years are eligible for the senior scale on the basis of the number of years service. In view of both these clarifications which are annexed as Exhibit 'I' and 'D' respectively to the Petition, the orders of the Administrative Officer, Higher Education Grant, withholding annual increments of Petitioner Nos.2 and 3 (Exhibits 'F' and 'G') are clearly incorrect.

2. Rule is therefore made absolute in the following terms :

. Respondent No.1 are directed to release the annual increments of Petitioner Nos.2 and 3, as also to consider them for senior scale if they are so eligible although they may not be holding the M.Phil Degree Qualification.

10. A copy of the said Writ Petition has been placed on

record. In the said Petition, the Petitioner Nos.2 and 3 were appointed as lecturers appointed in the year 1979 and 1981 respectively. The Petitioner Nos.2 and 3 were not holding M.Phil degree. Both of them were having Master's degree with less than 55% marks. By the impugned letters, the increments granted to the Petitioner Nos.2 and 3 were withheld on the ground that they have not acquired qualification of M.Phil degree within a period of eight years from the date of appointment.

11. In Writ Petition No.942 of 1992, the petitioner was working as a full time Lecturer in a college affiliated to the University of Mumbai. The Petitioner had obtained the post graduate Degree in Arts with 57.5% marks from Delhi University and M.Phil from University of Mumbai in February 1990. The Petitioner was appointed as a lecturer with effect from 20th June 1980. The increments of the Petitioners were withheld from 1988 to 1990 on the ground that the Petitioner did not obtain M.Phil degree within the period of eight years from his appointment. The challenge in the Petition was to the action of not granting increment to the Petitioner. A contention was raised before the Division Bench in the said Petition that the Petitioner ought to have obtained M.Phil Degree within a period of eight years and therefore the Petitioner was not qualified to get increment. While adverting to the G.R. dated 15th December 1989, this Court held thus :

"8. We find considerable substance in the submission of Mr.Masand. The artificial division made by the Government Resolution dated 15-12-1989 stares in the face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by the said Government Resolution dated 15-12-1989. **The effect of this Government Resolution of 15-12-1989 is that whereas teachers with 55% and above marks in relevant subject who were recruited between 1-1-1986 and 27-2-1989 would not be required to acquire qualification in M.Phil, but those appointed prior to 1-1-1986 like the Petitioner are required to obtain this qualification though both groups were similarly placed as on the date of the Government Resolution dated 27-2-1989. The equal treatment guaranteed under Art.14 is clearly violated inasmuch as the Government Resolutions accords differential and discriminatory treatment to equals in the matter of waiver of condition of passing M.Phil examination. We do no see any justification for such unequal treatment meted out to the petitioner and others who are similarly placed.** Therefore, prayer of the petitioner for quashing and setting aside the action of the 2nd respondent is liable to

be accepted..."

(Emphasis supplied)

12. The Division Bench held that effect of the G.R. dated 15th December 1989 is that whereas teachers with 55% and above marks in relevant subject who were recruited between 1-1-1986 and 27-2-1989 would not be required to acquire qualification of M.Phil. degree, but those who are appointed prior to 1-1-1986 were required to obtain this qualification though both the classes of the teachers were similarly placed as on the date of the G.R. dated 27th February 1989. This Court held that equal treatment guaranteed under Article 14 is clearly violated inasmuch as the said Government Resolution accords differential and discriminatory treatment to equals in the matter of waiver of condition of passing M.Phil examination.

13. Coming to facts of the Writ Petition No.1605 of 1992, the Petitioners No.2 to 6 were appointed between 1978 to 1985. The Petitioners secured more than 55% marks at the post graduate level and are having good academic record. The averment to that effect has been made in paragraph No.9 of the Petition. There is no specific denial of the said averments in the Affidavit-in-reply filed by the Respondent No.2. There is no denial of the said averments by the University of Mumbai and concerned colleges. In view of G.R. dated 15th December

1989, the requirement of obtaining M.Phil Degree has been dispensed with in case of teachers appointed between 1st January 1986 to 27th February 1989 having more than 55% marks in the relevant subject at the post graduation. In view of the decision of this Court in case of Prof. Malini (supra), and Shikshak Pratishatan (Supra) it is obvious that benefit of waiver of requirement of obtaining M.Phil Degree cannot be denied to the Petitioners. In the circumstances, notices dated 8th April 1982 issued to the petitioners in Writ Petition No.1605 of 1992 will have to be set aside. The directions will have to be given for granting of increments to the petitioners No.2 to 6 on the basis that the requirement of obtaining M.Phil Degree is not applicable to the Petitioners.

14. In so far as Appellate Side Writ Petition No.3557 of 1993 is concerned, the Petitioner Nos.2 and 3 have stated that they were appointed as Lecturers in Physics in Respondent No.3-College on 28th August 1982 and 1st July 1983 respectively. It is stated that they have secured more than 55% marks at the Master’s Degree. The averments to that effect made in paragraph No.3 of the Petition have not been denied by the Respondents by filing any Affidavit-in-reply. The Petitioners approached this Court as the Petitioner Nos.2 and 3 were denied increments on the ground that they have not acquired M.Phil degree within a period of eight years.

15. As far as Writ Petition No.1847 of 1992 is concerned, the Petitioners have stated that they were appointed as Lecturers between June and August 1979. None of them are not holding M.Phil Degree. None of them have claimed to have secured more than 55% marks in the relevant subjects at the post graduation. Only averment made in the Petition is that they have secured second class. Therefore, this is not a case where the Petitioners have obtained more than 55% marks in the relevant subject in the post graduate degree. In this case, the question is whether there is a discrimination on account of G.R. dated 15th December 1989. The sub clause (ii) of paragraph 1 of the said G.R. provides that the teachers appointed between 1st January 1986 and 27th February 1989 with second class with less than 55% marks in the relevant subject at the post graduation level without M.Phil degree will have to acquire the qualification of M.Phil degree within the stipulated period of eight years failing which their increments will have to be withheld with permanent effect and next increment will be released only after fulfilment of the said requirement.

16. In the light of earlier discussion, in our view, it is obvious that benefit which is made applicable by G.R. dated 15th December 1989 to the teachers appointed between 1st January 1986 and 27th February 1989 with less than 55% marks at post graduate level without M.Phil degree will have to be

made available to the said Petitioners who are appointed prior to 1st January 1986. However, condition regarding waiver of M.Phil degree cannot apply to the said Petitioners as they have not secured 55% marks at post graduate level. The Petitioners will be entitled to next increment only on obtaining M.Phil degree.

17. Hence, we pass the following order :

A) Writ Petition No.1605 of 1992

i) It is declared that the Petitioners No.2 to 6 are entitled to benefit of Clause 1(i) of G.R. dated 15th December 1989.

ii) Impugned Notices dated 8th April 1992 i.e. Exh.'H' and 'I' are quashed and set aside.

iii) The Petitioners No.2 to 6 will be entitled to all increments and consequential benefits which are made available to the teachers appointed between 1st January 1986 and 27th February 1989 having more than 55% marks in the relevant subject at post graduation level without insisting for acquiring M.Phil. degree.

iv) Rule is made partly absolute in above terms with no order as to costs.

B) Writ Petition No.3557 of 1993

(APPELLATE SIDE)

i) It is declared that the Petitioners No.2 and 3 are entitled to benefit of Clause 1(i) of G.R. dated 15th December 1989.

ii) Impugned communications dated 25th August 1992 i.e. Exh.'J' and 'K' are quashed and set aside.

iii) The Petitioners No.2 and 3 will be entitled to all increments and consequential benefits which are made available to the teachers appointed between 1st January 1986 and 27th February 1989 having more than 55% marks in the relevant subject at post graduation level without insisting for acquiring M.Phil.

iv) Rule is made partly absolute in above terms with no order as to costs.

C) Writ Petition No.1847 of 1992

1. It is declared that the Petitioners are entitled to all benefits which are made available to teachers covered by clause (ii) of paragraph No.1 of the G.R. dated 15th December

1989 and they will be entitled to next increment after obtaining M.Phil. degree.

3. Rule is made partly absolute in above terms.

. Parties to act upon an authenticated copy of this order.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)